

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Prosecution Response

to Defense Motion to
Compel Discovery #3

23 August 2012

RELIEF SOUGHT

The United States respectfully requests the Court deny, in part, the Defense Motion to Compel Discovery #3 (Defense Motion) because the United States will produce all emails of witnesses of both parties and all emails required under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), the Jencks Act, 18 U.S.C. § 3500, Rule for Courts-Martial (RCM) 701(a)(2), RCM 701(a)(6), and RCM 914.

BURDEN OF PERSUASION AND BURDEN OF PROOF

As the moving party, the Defense bears the burden of persuasion and must prove any factual issues necessary to decide this motion by a preponderance of the evidence. *See* Manual for Courts-Martial (MCM), United States, RCM 905(c) (2012).

FACTS

The United States stipulates to Defense Motion ¶¶ 4-6.

The United States stipulates to Defense Motion ¶ 7. The United States and Defense have proposed multiple filing dates, to include 15 June 2012, 27 July 2012, and 7 September 2012 for the Defense Motion to Dismiss for Unlawful Pretrial Punishment (Defense Article 13 Motion). *See* Appellate Exhibit I, Appellate Exhibit XX, Appellate Exhibit XLIV, Appellate Exhibit XLV, Appellate Exhibit CXIII

The United States stipulates to Defense Motion ¶ 8.

The United States stipulates to Defense Motion ¶ 9; however, the United States disputes the Defense description of the contents of the emails.

The United States stipulates that the Defense requested a continuance of the proceedings and that the Court granted the Defense's request on 1 August 2012.

On 8 December 2010, the Defense submitted a discovery request, requesting "[a]ny and all documents or observation notes by employees of the Quantico confinement facility relating to [the accused]." Enclosure 1 ¶ 2(m). In the same discovery request, the Defense requested "[a]ny report, e-mail or document discussing the need for the State Department to disconnect access to its files from the government's classified network." *Id.* ¶ 2(b) (emphasis added). The discovery

APPELLATE EXHIBIT 244
PAGE REFERENCED: _____
PAGE ____ OF ____ PAGES

request also requested, “[a]ny e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice.” *Id.* ¶ 2(f) (emphasis added). The discovery request further requested, “any and all memorandums, e-mails, or other references by Congressmen, Senators, or government officials concerning the disposition of this case or the need to punish [the accused].” *Id.* ¶ 2(k) (emphasis added). The discovery request requested, “[a]ny and all documentation, e-mails, or reports given to the Summary Court-Martial Convening Authority, the General Court-Martial Convening Authority, or the Staff Judge Advocate concerning the disposition of [the accused’s] case or nature of the charges or possible charges against [the accused].” *Id.* ¶ 2(l) (emphasis added).

On 1 August 2012, the Defense filed a discovery request, requesting. “[a]ll documentation provided . . . in response to the Government’s [prudential search request],” and “any other e-mails or documentation that the Government is aware of . . . dealing with [the accused’s] confinement conditions while at Quantico.” *See* Enclosure 2 ¶ 6(c)-(d).

On 17 August, the Defense filed the Defense Motion, stating that “that the Defense believed [the accused’s] confinement conditions were unnecessarily onerous.” Defense Motion ¶ 17. The Defense Motion also stated that the accused “had repeatedly requested to be removed from [maximum custody] and [prevention of injury status].” *Id.* The Defense stated that the emails demonstrate “the extent of involvement by individuals outside of the Quantico Brig in the custody status and classification of [the accused].” Defense Motion ¶ 19.

The United States will produce to the Defense the emails of the parties’ witnesses and emails material to the preparation of the defense on or before 28 August 2012.

WITNESSES/EVIDENCE

The United States does not request any witnesses be produced for this response. The United States respectfully requests that the Court consider the listed enclosures and Appellate Exhibits.

LEGAL AUTHORITY AND ARGUMENT

RCM 701(a)(2) requires the United States to permit the Defense to inspect documents that are material to the preparation of the defense that are within the possession, custody, or control of military authorities in response to a defense request. RCM 701(a)(2). The United States does not have to “search for information material to the preparation of the defense without a specific discovery request.” Appellate Exhibit CXLVII at 5. Instead, a defense request “specifying what must be produced” triggers the rule. Appellate Exhibit CXLVII at 5; RCM 701(a) analysis, at A21-34 (2012). The Defense request must provide notice with specificity of the information it desires. *See United States v. Eshalomi*, 23 M.J. 12, 22 (C.M.A. 1986) (citing *United States v. Agurs*, 427 U.S. 97, 106 (1976)). A request for all information fails to provide the United States with adequate notice. *See Agurs*, 427 U.S. at 106 (deciding that an indefinite request for all exculpatory information “really gives the prosecutor no better notice than if no request is made”). Additionally, the United States must turn over information to the Defense that

is obviously material to the preparation of the defense. *See* Appellate Exhibit CXLVII at 5; RCM 701(a) analysis, at A21-34 (2012).

RCM 701(a)(2) is “grounded on the fundamental concept of relevance. *United States v. Graner*, 69 M.J. 104, 107 (C.A.A.F. 2010). Relevant emails that would assist the Defense in formulating a strategy are material to the preparation of the defense. *See United States v. Webb*, 66 M.J. 89, 92 (C.A.A.F. 2008) (citing *United States v. Roberts*, 59 M.J. 323, 325 (C.A.A.F. 2004)). Additionally, the Defense defines material to the preparation of the defense as “relevant and helpful.” Defense Motion ¶ 21 (“The Government must turn over all documents which are material to the preparation of the Defense – as in relevant and helpful.”).

I. THE DEFENSE DID NOT TRIGGER RCM 701(A)(2) UNTIL 1 AUGUST 2012

On 26 July 2012, the United States produced eighty-four emails that were obviously material to the preparation of the defense without a request from the Defense for emails from the Brig. The Defense first requested emails from the Brig on 1 August 2012. *See* Enclosure 2 ¶ 6(d). The Defense contends that its 8 December 2010 discovery request for “[a]ny and all documents or observation notes by employees of the Quantico confinement facility relating to [the accused]” included email. *See* Defense Motion ¶ 16; *but see* Enclosure 1 ¶ 2(m). However, the Defense only requested “documents or observation notes” from the Brig. The Defense itself distinguished between documents and emails by requesting emails in four other separate requests in the same document. *See* Enclosure 1 ¶ 2(b); Enclosure 1 ¶ 2(f); Enclosure 1 ¶ 2(k); Enclosure 1 ¶ 2(l). The Defense now avers that the United States should not have made the distinction the Defense itself made in the Defense discovery request—the request the Defense now cites in support of its theory that it requested email from the Brig on 8 December 2010. *See* Defense Motion ¶ 16. Because the Defense distinguished between documents and emails within its own request, its claim that it requested email before 1 August 2012 lacks merit. Accordingly, Defense first requested emails from the Brig on 1 August 2012.

II. THE DEFENSE DID NOT PROVIDE NOTICE OF MATERIALITY UNTIL 17 AUGUST 2012

The Defense request on 1 August 2012 provided the United States with no notice of materiality because the Defense simply requested “any other e-mails” without even a scant provision of relevance or materiality. However, the Defense provided a basis for determining materiality in the Defense Motion on 17 August 2012 by stating that “the extent of involvement by individuals outside of the Quantico Brig in the custody status and classification of [the accused],” the conditions of the accused’s confinement “were unnecessarily onerous,” and the accused “repeatedly requested to be removed from [maximum custody] and [prevention of injury status].”

Based on the stated standards and in preparation for the Article 39(a) during 1 to 5 October 2012, the United States will produce *all* emails of witnesses of both parties and all emails required under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), the Jencks Act, 18 U.S.C. § 3500, RCM 701(a)(2), RCM 701(a)(6), and RCM 914.

The emails the United States has not produced are related to: 1) public affairs, to include discussions of media articles and preparing responses to media inquiries, including responses to media reports by the New York Times and Frontline, 2) protesters at Marine Corps Base Quantico (MCBQ), to include discussions of upcoming protests, the number of protestors, and plans to respond to protests, 3) discussions of operational impact on the Pretrial Confinement Facility (the Brig) at MCBQ based on projected detainees, the Defense Base Realignment and Closure Commission (BRAC), providing behavioral health support to detainees, to include the accused, 4) funding of behavioral health professionals, to include discussions of the extent of each Service's financial obligations, 5) administrative coordination, to include ensuring detainees, including the accused, had constant coverage of behavior health, ensuring the accused had the proper uniform, discussing the accused's "chasers," 6) discussions of the definition of Brig regulations regarding visits and statements of changes the accused made to his visitation list, 7) editing drafts of proposed documents, to include responses to media inquiries, 8) discussion of visits of officials to the Brig unrelated to the accused, and 9) discussions of complying with the Health Insurance Portability and Accountability Act (HIPAA).

The emails that were not produced are not helpful to the Defense's preparation because they pertain to matters unrelated to the conditions of the accused's confinement or matters not related to the accused's custody and classification. The Defense argues that the number of emails indicates "the involvement by individuals outside of the Quantico Brig," but the number of emails only indicates the breadth of issues to which the Brig responded during the accused's confinement for over eight months. The emails not produced are not relevant because they do not describe the conditions of the accused's confinement, nor do the emails pertain to decisions regarding the accused's classification or status. Moreover, the emails do not yield any insight into the conditions of the accused's confinement nor the accused's classification or status. Therefore, the emails not produced are not material to the preparation of the defense. The defense alleges that orders were given to keep the accused in a certain status and custody but there are no such orders. Seeing emails discussing responses to media inquiries or HIPAA compliance grants no insight to the Defense and therefore is not material to its preparation.

CONCLUSION

Based on the above, the United States respectfully requests the Court deny, in part, the Defense Motion.



ALEXANDER VON ELTEN
CPT, JA
Assistant Trial Counsel

Enclosures

1. Defense Discovery Request dated 8 December 2010
2. Defense Discovery Request dated 1 August 2012
3. Fein Email, "Government Notice to Court" dated 23 August 2012

I certify that I served or caused to be served a true copy of the above on Mr. David Coombs, Civilian Defense Counsel, via electronic mail, on 23 August 2012.

A handwritten signature in black ink, appearing to be 'A. von Elten', written in a cursive style.

ALEXANDER VON ELTEN
CPT, JA
Assistant Trial Counsel

UNITED STATES OF AMERICA

v.

**Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211**

Prosecution Response

**to Defense Motion to
Compel Discovery**

Enclosure 1

23 August 2012

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-(b) (6)

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 8 December 2010

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for supplemental discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The defense requests that the government respond to each item listed in its 29 October and 15 November 2010 discovery requests and the following additional discovery:

a) The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case, previously requested on 29 October and 15 November 2010. Specifically, contact information for (b)(7)(c) from the Department of Defense and (b)(7)(v) from the Army Computer Crimes Unit and an inventory of the items seized from the home of Mr. Paul Francia at (b)(6)

b) All forensic results and investigative reports by the Department of State regarding the information obtained by Wikileaks as referenced by Assistant Secretary of State for Public Affairs P.J. Crowley. Additionally, any specific damage assessment by the Department of State regarding the disclosures of the diplomatic cables by WikiLeaks. Any assessment, report, e mail, or document by Secretary of State Hillary Rodham Clinton regarding the disclosures of diplomatic cables by Wikileaks. Any report, e-mail, or document discussing the need for the State Department to disconnect access to its files from the government's classified network.

c) All forensic results and investigative reports by the Department of Defense regarding the information obtained by Wikileaks and the results of any joint investigation with the Federal Bureau of Investigation (FBI) as referenced by Secretary of Defense Robert M. Gates. Additionally, any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case. by WikiLeaks.

- d) Any and all documentation related to the Department of Justice investigation into the alleged leaks by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder.
- e) Any and all documentation related to President Barack H. Obama's order for an investigation and a government wide-review of how agencies safeguard sensitive information. Additionally, any and all documents related to the steps the administration is considering regarding these leaks and the nature of the criminal investigation underway into how the documents were made public as referenced by Robert Gibbs, the White House spokesman.
- f) Any assessment given, or discussions concerning, the Wikileaks disclosures by any member of the government to President Obama. Any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice.
- g) Any and all documents relating to the Government Task Force created to review the various WikiLeaks releases for potentially damaging information prior to the actual releases. This Task Force apparently had over 120 members reviewing the documents that were either released or pending release to determine the possible harm to national security.
- h) The results of any investigation or review by Mr. Russell Travers who has been appointed by President Obama to head an interagency committee assigned to assess the damage caused WikiLeaks exposures and to organize efforts to tighten security measures in government agencies.
- i) Any and all documentation related to the Pentagon's review on the policy and technological shortfalls that led to the WikiLeaks disclosures as referenced by Pentagon spokesman Bryan Whitman.
- j) Any and all documentation related to the Central Intelligence Agency (CIA) investigation of Wikileaks announced by CIA Director Leon Panetta and any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters.
- k) Any and all documentation relating to the government's position of taking a hard line on unauthorized leaks of information, as demonstrated by the prosecutions of a former National Security Agency official, a Federal Bureau of Investigation linguist, and a State Department contractor and referenced by CIA Director Leon Panetta. Additionally, any and all memorandums, e-mails, or other references by Congressmen, Senators, or government officials concerning the disposition of this case or the need to punish PFC Bradley Manning.

l) Any and all documentation, e-mails, or reports given to the Summary Court-Martial Convening Authority, the General Court-Martial Convening Authority, or the Staff Judge Advocate concerning the disposition of PFC Bradley Manning's case or the nature of the charges or possible charges against PFC Manning. Specifically, any attempt to influence the independent discretion of anyone involved in the military justice process.

m) Any and all documents or observation notes by employees of the Quantico confinement facility relating to PFC Bradley Manning.

n) The results of the 15-6 investigation into the government's improper release of classified information to the defense. Whether the 15-6 investigating officer looked into the following additional potential spillage:

i. The disc allegedly found in PFC Manning's Room indicated the contents were SECRET. A photo of the disk can be found at 000293. Was the title on the disk classified or not?

ii. The photos of the T-SCIF show a map in the background that was partially exposed (000301 and 000302).

iii. The snapshots of the computer screens in the T-SCIF were exposed. Was there classified information being viewed on the screen? (000305 and 000306).

iv. The snapshots of the computers had documentation on the table appear to show classified information. (000333, 000334, and 000335).

v. Was the investigating officer made aware of the government disclosure of the original five discs to the military defense counsel?

3. The defense requests that the government inform the defense counsel if it does not intend to comply with any specific provision of this request.

4. It is understood that this is a continuing request.

5. A copy of this request was served on Trial Counsel by e-mail on 8 December 2010.


DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES OF AMERICA

v.

**Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
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Fort Myer, Virginia 22211**

Prosecution Response

**to Defense Motion to
Compel Discovery**

Enclosure 2

23 August 2012

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-(b)(6)

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 1 August 2012

1. In accordance with the Rules for Courts-Martial 701(a)(2), 701(a)(6) and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. PFC Manning was held at Marine Corps Base Quantico from 29 July 2010 to 20 April 2011. During this time, he was held in Maximum Custody (MAX) and under Prevention of Injury (POI) watch.

3. On 8 December 2010, the Defense made a discovery request for all documentation from Quantico pertaining to PFC Manning. The Government provided extensive documentation related to PFC Manning's confinement at Quantico in October of 2011. The Defense believed that this was the full extent of the information the Government had from Quantico.

4. On 26 August 2012, the Government produced 84 emails from various individuals. The Government indicated that these emails were "obviously" material to the preparation of the defense for the Article 13 purposes. MAJ Fein indicated that the Government received these emails from Quantico approximately 6 months ago. However, the Government did not begin reviewing the emails until 25 July 2012.

5. On 31 August 2012, CPT Joe Morrow, by e-mail, informed the Defense that the Government had "made a generalized request for Quantico to gather and preserve documents and information pertaining to PFC Manning's confinement." CPT Morrow stated that "they responded by providing documents and information pertaining to his confinement, and included some emails."

6. The Defense requests that the Government provide the following discovery:

- a) The memorandum/e-mail/document from the Government to Quantico requesting that they preservation and produce documents and information pertaining to PFC Manning's confinement;
- b) The names of the individuals who the Government sent the Quantico preservation request to and the date which the Government made its request;

Defense Discovery Request – PFC Bradley E. Manning

- c) All documentation provided by these individuals in response to the Government's request, the date this information was provided, and the individuals who provided the requested information; and
- d) Any other e-mails or documentation that the Government is aware of and has not previously provided to the Defense dealing with PFC Manning's confinement conditions while at Quantico.

7. The Defense also requests any e-mails or documentation relating to PFC Manning or PFC Manning's confinement conditions from or to the following specifically listed individuals:

- a) LtGen. George J. Flynn, (b)(6)
- b) Col. Christopher Miner, (b)(6)
- c) Col. Royal Mortenson, (b)(6)
- d) COL Carl R. Coffman Jr., (b)(6)
- e) Col. Daniel J. Choike, (b)(6)
- f) Col. Mark M. Kauzlarich, (b)(6)
- g) CDR Han Bui, (b)(6)
- h) Capt. Mary Neill, (b)(6)
- i) LtCol. Christopher M. Greer, (b)(6)
- j) LtCol. Amy R. Ebitz, (b)(6)
- k) CPT John Haberland, (b)(6)
- l) CWO5 Abel Galaviz, (b)(6)

Defense Discovery Request – PFC Bradley E. Manning

- m) CWO4 James T. Averhart, [REDACTED]
[REDACTED] (b)(6)
- n) CWO2 Denise Barnes, [REDACTED]
[REDACTED] (b)(6)
- o) MSgt Brian R. Papakie, [REDACTED]
[REDACTED] (b)(6)
- p) GySgt Craig M. Blenis, [REDACTED]
[REDACTED] (b)(6)
- q) GySgt William R. Fuller, [REDACTED]
[REDACTED] (b)(6)

8. The Defense requests that the Government provide notice in writing as soon as possible if it does not intend to comply with any specific provision of this request. The Defense will need timely notice of the Government's intent to not comply in order to immediately file a motion to compel discovery. Timely notice by the Government will avoid the need for an additional delay for the Article 13 motion.

9. It is understood that this is a continuing request.

10. A copy of this request was served on Trial Counsel by e-mail on 1 August 2012.

DAVID EDWARD COOMBS
Civilian Defense Counsel

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23 August 2012

From: Fein, Ashden MAJ USARMY MDW (US)
To: Lind, Denise R COL USARMY (US)
Cc: David Coombs; "Hurley, Thomas F MAJ OSD OMC Defense"; Tooman, Joshua J CPT USARMY (US); Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US); Williams, Patricia A CIV (US); Jefferson, Dashawn MSG USARMY (US); Moore, Katrina R SFC USARMY (US)
Subject: Government Notice to Court
Date: Thursday, August 23, 2012 11:25:41 AM
Attachments: Jencks.msg
Classified Information Access.msg
Importance: High

Ma'am,

Good morning. The purpose of this email is to provide the Court notice and an update on two issues to prevent any surprises or confusion during the upcoming hearing and to capture these two issues for the record.

1. Jencks Disclosure. On 26 July 2012, the Court directed the United States to notify the defense by 3 August what type of statements the government intends to disclose to the defense IAW RCM 914 (see email, 26 July 2012, 5:40pm). The Court directed the defense to file a motion by 17 August if it took issue with the government's plan. On 3 August, the government provided the attached notice to the defense and an email conversation ensued. The defense did not object to the government interpretation of Jencks or its plan moving forward, nor did they file a motion on 17 August 2012. Therefore, this issue should be resolved. As of today, the United States will move forward with its plan to begin disclosing statements encompassed by RCM 914, starting with designated witnesses for the Article 13 motion.

2. Defense Motion to Amend the Protective Order. On 17 August 2012, the defense requested leave of the Court to use a computer that was not authorized under the Court's protective order and SIPRNET for its filing. The Court instructed both parties that this issue would be addressed at the next Article 39(a) session and that both parties should confer to determine if there is a mutually agreeable solution (see email, 17 August 2012, 4:23pm). The defense had not requested from the government to use that computer or SIPRNET prior to its filing on Friday. Since Monday of this week, the prosecution has attempted to coordinate with the defense and appropriate entities within the US Army to determine capabilities and authorities. At this point, without the information we have requested from the defense (enclosed on email and listed below), the prosecution will not be able to formulate a position on behalf of the government, to include supporting the defense's request, supporting it in part, or objecting, if at all. Without walking into the defense's office and examining their systems ourselves, the prosecution is not in a position to understand their capabilities. Therefore, without this information and a reasonable amount of time to work through the capabilities and approvals, the United States will be objecting to the Court's consideration of this requested amendment at next week's hearing and requesting a continuance to properly staff this request. Ultimately, we think the protective order issue is an issue which the parties could mutually resolve without the Court's involvement, but we need more info from defense to move forward.

v/r
MAJ Fein

-----Original Message-----

From: David Coombs (b)(6)
Sent: Wednesday, August 22, 2012 7:03 PM
To: Fein, Ashden MAJ USARMY MDW (US); 'Hurley, Thomas F MAJ OSD OMC Defense'; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: RE: Outstanding Emails

Ashden,

1. Please refer to the Court's email on 26 July 2012;
2. This issue is currently under advisement with the Court.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs

(b)(6)

Confidentiality Notice: This transmission, including attachments, may contain confidential attorney-client information and is intended for the person(s) or company named. If you are not the intended recipient, please notify the sender and delete all copies. Unauthorized disclosure, copying or use of this information may be unlawful and is prohibited.

-----Original Message-----

From: Fein, Ashden MAJ USARMY MDW (US)
Sent: Wednesday, August 22, 2012 6:52 PM
To: David Coombs; 'Hurley, Thomas F MAJ OSD OMC Defense'; Tooman, Joshua J CPT USARMY (US)
Cc: Morrow, JoDean (Joe) III CPT USARMY USAMDW (US); Overgaard, Angel M CPT USARMY (US); Whyte, J Hunter CPT USARMY (US); von Elten, Alexander S (Alec) CPT USARMY (US); Ford, Arthur D Jr CW2 USARMY (US)
Subject: Outstanding Emails
Importance: High

David, MAJ Hurley, and CPT Tooman,

The United States sent the defense two separate emails yesterday which are attached. We have not heard back from any defense counsel as of tonight.

1. Could you please respond to the defense's position on Jencks, so that we may notify the Court, and properly respond to the defense motion to compel discovery 3, and start implementing our Jencks plan before the end of the week?
2. Could you please respond to the questions about access to classified information so that we may coordinate with HQDA and other organizations about the requirements, and determine the capabilities and proper authorities? We are trying to process this request as fast as possible so we can provide the defense and Court an update next week.

Thank you!

v/r
Ashden